



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/646,929

08/25/2003

Paul K. Piontkowski

1610

7590

09/12/2005

DR. PAUL K. PIONTKOWSKI
2310 POPKINS LANE
ALEXANDRIA, VA 22306

EXAMINER

NGUYEN, THONG Q

ART UNIT

PAPER NUMBER

2872

DATE MAILED: 09/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/646,929

Applicant(s)

PIONTKOWSKI, PAUL K.

Examiner

Thong Q. Nguyen

Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/13/05; 1/21/05; 4/12/05 and 6/23/05.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 15-28 and 30-32 is/are pending in the application.
4a) Of the above claim(s) 18 and 19 is/are withdrawn from consideration.
5) ☒ Claim(s) 1-11, 20, 21, 25-28 and 30-32 is/are allowed.
6) ☒ Claim(s) 12, 15-17 and 22-24 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/2/05
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The present Office action is made in response to the amendments filed on 1/13/05; 1/21/05; 4/12/05 and 6/23/05. It is noted that the amendments filed on 1/21/05 and 4/12/05 do not comply with the requirements set forth in 37 CFR 1.121 and thus two mentioned amendments have not been entered. The amendments filed on 1/13/05 and on 6/23/05 have been entered.

As a result of entering the amendments of 1/13/05 and 6/23/05, the application has contained the following changes.

A) Regarding to the specification, applicant has amended the specification in sections [0005]; [0011]; [0013]; and [0014] (see amendment of 1/13/05) and section [0012] (see amendment of 6/23/05).

B) In the claims, applicant has amended claims 1, 7, 12, 15-19; canceled claims 13-14 and added new claims 24-32 into the application. See amendment of 1/13/05. It is also noted that applicant has amended claims 25-26 and 30 and canceled claim 29 in the amendment of 6/23/05.

As a result, the pending claims are claims 1-12, 15-28 and 30-32. Claims 1-12, 15-17, 20-28 and 30-32 are examined in this Office action and claims 18-19 have been withdrawn from further consideration as being directed to non-elected species.

Drawings

2. The drawing contains corrected figure 3 was received on 4/27/2004 and received one more time on 6/23/05. The corrected figure 3 has been approved by the Examiner.

3. Regarding to the objection of figures 1 and 4 as set forth in the previous Office action, the objections have been overcome by the amendments to the specification (see amendment of 1/13/05).

However, the drawings contained original figures 1 and 4 are objected by the Examiner for the following reason(s).

Specification

4. The lengthy specification which was amended by the amendments of 1/13/05 and 6/23/05 has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 12, 15 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takizawa et al (U.S. Patent No. 4,396,260, of record) in view of Yamamoto et al (U.S. Patent No. 5,442,489) and Harooni et al (U.S. Patent No. 5,841,509, of record).

Takizawa et al disclose a stereomicroscope having an illumination system. The stereomicroscope as described in columns 2-3 and shown in figures 1-3 comprises a hollow elongated tube (20) having two ends. An objective system having a lens frame (23) supporting an objective lens (11) attached to the tube at one end thereof. A set of ocular systems each has a prism system (14a or 14b) and an ocular lens system (16a or 16b) attached to the other end of the tube. A

varying magnification mechanism disposed between the objective lens and a prism system (17a or 17b) for splitting light. The mechanism comprises a rotary member (21) rotated about an axis perpendicular to the light path wherein the rotary member comprises two set of bores in which a first set of bores supports a set of lens elements (12a) and another set of bores supporting another set of lens elements (12b). See column 3. When a rotation of the rotary member is made then either the set of lens elements (12a or 12b) or a set of apertures (22a or 22b) is inserted into the light path for the purpose of selection a particular magnification level to the image/light passing therethrough. It is also noted that the use of a light source located near the objective section of the stereomicroscope is also provided by Takizawa et al as can be seen in column 2 and fig. 1.

Regarding to the first and second optical paths, it is noted that a first optical path from an object to be viewed passes through the objective lens (11), the magnification lens elements (12a), the prisms (17a, 14a) and the ocular lens (16a) while a second optical path from an object to be viewed passes through the objective lens (11), the magnification lens elements (12b), the prisms (17b, 14b) and the ocular lens (16b). The first and second optical paths are in the same plane. As a result, the stereomicroscope having an illuminating system and a variable magnification system as provided by Takizawa et al meets all of the features of the inventive device except the feature related to the light source

used in the illumination system and their arrangement with respect to the hollow elongated tube as claimed.

Regarding to the use of light emitting diode for providing light as claimed, such a feature is merely that of a preferred embodiment and there is not any criticality to the invention. The support for that conclusion is found in the present specification in section [0011] in which applicant has taught that other light source may be used in place of the light emitting diode. Further, the use of light emitting diode in an illuminating device is known to one skilled in the art as can be seen in the ophthalmoscope provided by Harooni et al. In particular, Harooni et al disclose an ophthalmoscope having an illuminating system and an observation system. The illuminating system as described in columns 3-5 and shown in figure 2 comprises a light emitting diode (145) having a reflector (185) disposed behind for the purpose of increasing the light amount of the diode toward the front side and a filter system (155) disposed in the front side of the diode (145). While Harooni et al do not clearly state that the filter is pivoting; however, it would have been obvious to one skilled in the art to use a mechanism for pivoting the filter in front of the diode for the purpose of controlling the kind of light/wavelength from the diode to the object to be illuminated. Thus, it would have been obvious to one skilled in the art at the time the invention was made to modify the illuminating system provided by Takizawa et al by using an illuminating system having a diode, a reflector and a filter as suggested by Harooni et al and pivoting the filter

for the purpose of controlling the amount of light and the type of light/wavelength to illuminate an object.

Regarding to the arrangement of the light source in the tube as recited in the present claim 12, such an arrangement is also known to one skilled in the art as can be seen in the magnifying observation system provided by Yamamoto et al. In particular, in columns 6-8 and figures 1-3, Yamamoto et al disclose an illuminating system for an optical device and teach that the illumination system having light sources (23) and optical elements (22, 27, 35, 36) is arranged inside a hollow elongated tube (5). Thus, it would have been obvious to one skilled in the art at the time the invention was made to modify the combined product provided by Takizawa et al and Harooni et al by rearranging the illumination system having light emitting diodes and other optical elements inside the elongated tube as suggested by Yamamoto et al for the purpose of obtaining a more compact configuration for the stereomicroscope.

7. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Takizawa et al, Harooni et al and Yamamoto et al as applied to claim 12 and further of Blaha et al (U.S. Patent No. 4,175,826, of record).

The combined product provided by Takizawa et al, Harooni et al and Yamamoto et al does not suggest a mechanism for pivoting the eyepiece system with respect to the body of the stereomicroscope. However, the use of a microscope having a pivotal eyepiece systems is well known to one skilled in the art as can be seen in the microscope provided by Blaha et al. In particular, Blaha et al

disclose a stereomicroscope having a microscope body (1a) and a movable section (1b) supporting an eyepiece system wherein the section supporting the eyepiece system is able to pivot/rotate with respect to the microscope body (1a) for the purpose of providing different height/dimension of the eyepiece to an observer. See columns 1-2. Thus, it would have been obvious to one skilled in the art at the time the invention was made to modify the system provided by Takizawa et al, Harooni et al and Yamamoto et al by utilizing a pivotal mechanism between the eyepiece section and the main body of the microscope as suggested by Blaha et al for the purpose of pivoting/rotating the eyepiece section with respect to the main body of the microscope for the purpose of providing different heights/dimension suitable to an observer.

8. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Takizawa et al, Harooni et al and Yamamoto et al as applied to claim 12 above, and further in view of Fukaya (U.S. Patent No. 5,420,716, of record).

The combined product as described above does not disclose that it is able to wear by an observer at one end and the other end of the system is attached to a mechanism having adjustable arm and a support mount. However, such a structure is known to one skilled in the art as can be seen in the device having a mounting system for supporting a microscope provided by Fukaya. In particular, in columns 3-4 and shown in fig. 2, the mechanism provided by Fukaya comprises a mounting system having adjustable arm (see also figure 1) for supporting a microscope (1) wherein the microscope is attached to the adjustable

arm at one end and attached to a headrest (9) at other end. Thus, it would have been obvious to one skilled in the art at the time the invention was made to utilize a mechanism having support mount and adjustable arm as provided by Fukaya for supporting the combined product provided by Takizawa et al, Harooni et al and Yamamoto et al for the purpose of providing a user means for observation without using his hands and still able to move the system worn by the user to observe different section of the object via the adjustable arm of the support mount.

9. Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takizawa et al, Harooni et al and Yamamoto et al as applied to claim 12 above and further in view of Fogle (U.S. Patent No. 3,434,772, of record).

The combined product provided by Takizawa et al, Harooni et al and Yamamoto et al does not disclose that the optical elements are mounted on a base section located inside an elongated body defined by shells fastened together as claimed. However, such use of shells fastened together for defining an open which is in turn supported a mount having plural optical elements mounted therein is known to one skilled in the art. An example of use a mount supporting a plurality of optical elements which mount is located inside an open defined by shells fastened together is disclosed in columns 2-4 and shown in figures 1-8. Thus, it would have been obvious to one skilled in the art at the time the invention was made to modify the combined product provided by Takizawa et al, Harooni et al and Yamamoto et al by mounting optical elements on a mounting section and

then disposed the mounting section inside an open defined by shells fastened together as suggested by Fogle for the purpose of proving an easier way to install and remove the optical elements.

Allowable Subject Matter

10. Claims 1-11, 20-21, 25-28 and 30-32 are allowed.
11. The following is a statement of reasons for the indication of allowable subject matter:

The device as claimed in claim 1 is patentable with respect to the cited art, in particular, the U.S. Patent Nos. 4,396,260; 4,195,903; 5,121,220 and 4,277,130 by the limitation related to the structure of the lens magnification changer. While the use of a variable magnification changer having three tubes supporting three lens system able to move for changing the magnification of light passing through each tube is disclosed in the art as can be seen in the Patent 4,277,130 or a mechanism having support for supporting a rotary member supporting three optical systems is disclosed in the Patent 5,121,220; however, the cited art does not disclose a variable magnification changer having three set of bores disposed about the periphery of the changer and each set of bores extends diametrically through the changer as claimed.

The device as claimed in claim 25 is patentable with respect to the cited art, in particular, the U.S. Patent Nos. 4,396,260 and 4,275,949 by the limitations related to the structure of the internal mount having a base for supporting two oculars, a prism assembly, a variable magnification system; and a shell attached to the

internal mount for enclosing the prism assembly, the variable magnification system and a part of the oculars as claimed.

Response to Arguments

12. Applicant's arguments with respect to claims 12, 15-17 and 22-24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

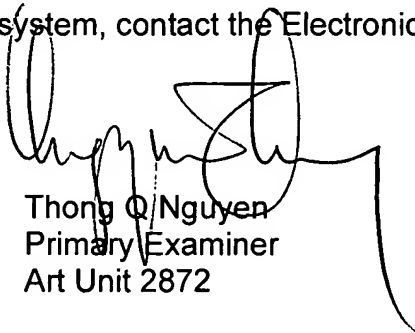
13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thong Q Nguyen whose telephone number is (571) 272-2316. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew A Dunn can be reached on (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thong Q. Nguyen
Primary Examiner
Art Unit 2872



Exhib 2/28/05

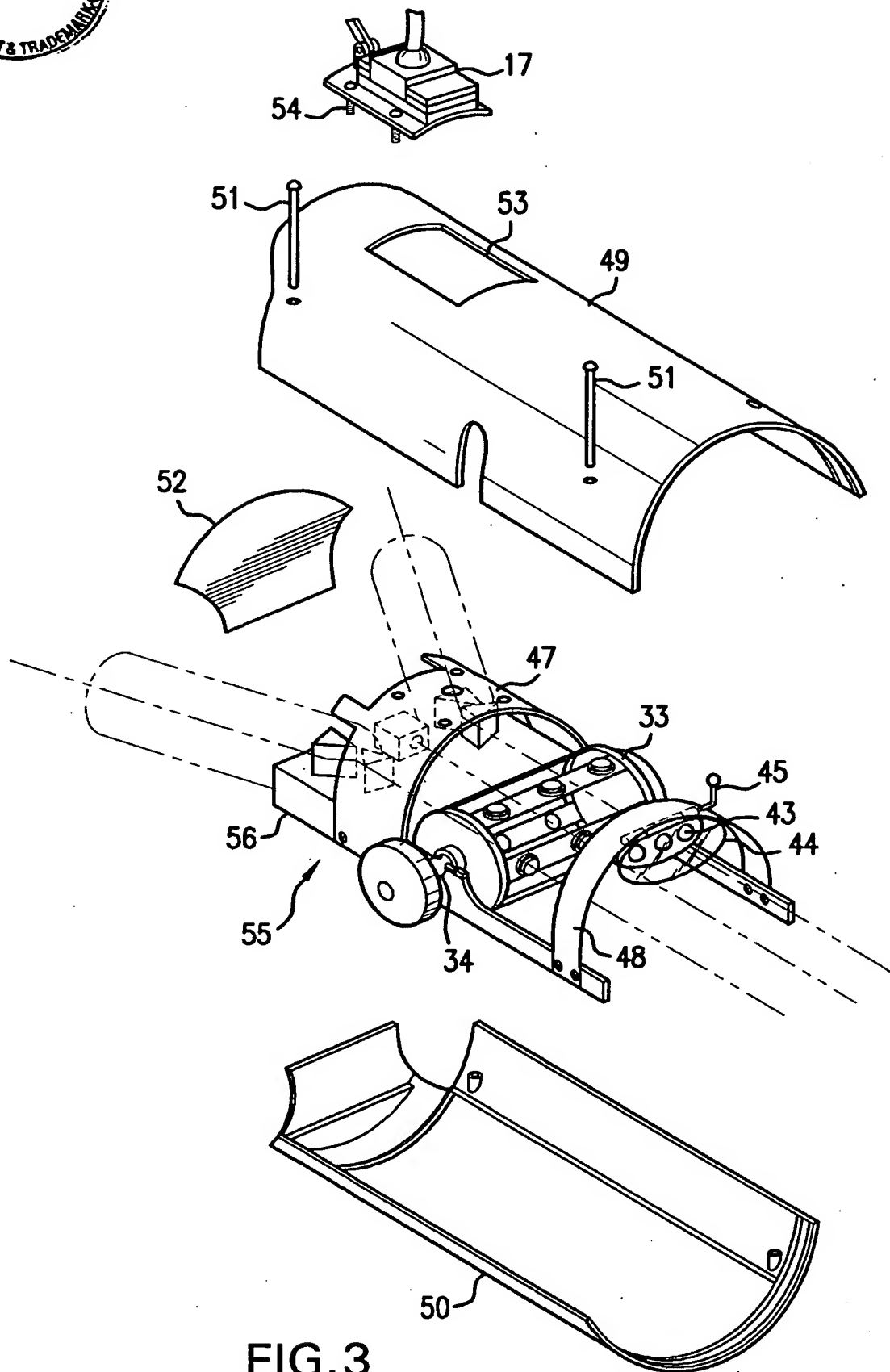


FIG. 3